



**COUNTY OF ALAMEDA
PUBLIC WORKS AGENCY**

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U.S. Army Corps of Engineers
Attn: CECW-CE, Douglas J. Wade
441 G Street, NW.
Washington, DC 20314-1000

April 22, 2010

Subject: Guidelines for Variance to Vegetation Requirements on Levees.
Docket No. COE-2010-0007 www.regulations.gov

Dear Mr. Wade:

Alameda County Flood Control and Water Conservation District manages extensive network of natural and constructed channels including those constructed by the US Army Corps of Engineers. The District appreciates the additional time provided to review and comment on the Vegetation Variance guidelines policy.

The District provides the following comments.

General Comments

According to the Guidelines for Variance, all new and existing variance requests will become subject to the new guidelines effective September 30, 2010. Since the Policy is yet to be approved and adopted, the District and other stakeholders need more time beyond the September 2010 time frame to develop plans, fund and effectively gather all necessary information in support of an application. The stated September 30, 2010 effective date should be modified.

The Guidelines, (a change in federal level policy) for the entire nation needs to include provisions that accommodate variations in regional and local conditions. Without such provisions, the policy may be inconsistent with many California policies and initiatives (Rough Draft Communiqué).

This federal level policy change is substantial. It is likely to result in significant impacts on the environment. Therefore, preparation of an Environmental Impact Statement (EIS) is warranted to provide the affected resource agencies and stake-holders opportunity to comment.

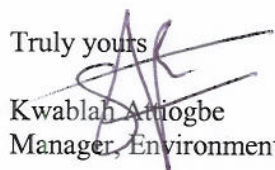
The Alameda County Flood Control and Water Conservation District manages the USACE constructed Alameda Creek flood control channel. This 13-mile channel has been designated as critical habitat for Steelhead (*O. mykiss*). Major effort is underway to improve the habitat. Limiting and removing the existing vegetation in the corridor to satisfy the Guidelines for Variance would significantly affect species recovery efforts and a violation of the Endangered Species Act. Under, either scenario, the local agency is on the hook to satisfy the guidelines for variance and provide endangered species habitat. The Guidelines did not adequately consider this conflicting demand on local agencies.

Specific comments

- It would be impractical to implement as it conflicts with Federal and state endangered species Acts. Complying with the policy would result in out of compliance with California Endangered Species Act (CESA), Federal Endangered Species Act (ESA), National environmental Policy Act (NEPA) and California Environmental Policy Act (CEQA). The policy could harm listed species such as steelhead and salmon. To comply with these regulations to satisfy the Guidelines for Variance would result in prohibitively expensive mitigation costs.
- The Guidelines for Variance will require a great deal of mitigation to comply with the competing regulations. In many areas, especially along the San Francisco Bay Region, sites for mitigation are scarce. It is therefore unlikely that many local sponsors would be able to shoulder the costs.
- It is not clear if this policy retains the concept of self-mitigating erosion repairs?
- The policy as designed and proposed would result in piece-mealing of environmental impacts contrary both Federal and State environmental laws. The policy should be modified to include more than just small reaches.
- Exclusion of the upper 3rd of the waterside slope, the crown, and the landside slope of a levee from the Guidelines makes it rather useless. Certain levee reaches along certain portions of California may become completely denuded resulting in increased habitat degradation and impacts on listed species and recovery efforts.
- The Guidelines need to consider the levee level of failure risk. As proposed with absolute standards (1) Safety, structural integrity and functionality; 2) Accessibility for maintenance, inspection, monitoring, and flood-fighting) renders it unworkable. For example, reaches of some levees could be modified by planting to benefit endangered Steelhead and Coho Salmon without compromising the protection values.
- Item 6.a.1 in the Federal Register: It is unclear how the approval criteria will be applied to variance requests.

Thank you for the opportunity to comment on the draft Guidelines for Variance to Vegetation Requirement on Levees.

Truly yours


Kwablah Attiogbe
Manager, Environmental Services

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